



Comptroller General  
of the United States

Washington, D.C. 20548

## Decision

**Matter of:** S.A. SABER

**File:** B-249874

**Date:** December 10, 1992

Timothy S. Kerr, Esq., Starfield & Payne, for the protester.  
Gregory H. Petkoff, Esq., Department of the Air Force, for  
the agency.

Daniel I. Gordon, Esq., and Paul Lieberman, Esq., Office of  
the General Counsel, GAO, participated in the preparation of  
the decision.

### DIGEST

Where a procurement has been set aside for small disadvantaged businesses (SDB) and the cognizant office of the Small Business Administration (SBA) has determined that the protester does not qualify as an SDB for purposes of the procurement, the protester is not an interested party to challenge the proposal evaluation, notwithstanding a pending appeal within the SBA.

### DECISION

S.A. SABER, a joint venture of Fuerte Construction Company, Inc., and Transco Contracting Company, protests the award of a contract to A.W. & Associates, Inc., under request for proposals (RFP) No. F41685-92-R-0012, issued by the Department of the Air Force for construction services at Laughlin Air Force Base. The procurement was issued as a set-aside for small disadvantaged businesses (SDB).

We dismiss the protest because the cognizant office of the Small Business Administration (SBA) has determined that the protester does not qualify as an SDB for the purpose of the RFP, and therefore the protester is not an interested party to challenge the Air Force's source selection in a procurement set aside for SDBs.

The RFP was issued on March 20, 1992. Nine proposals were received by the May 5 closing date. In its proposal, SABER certified that it is an SDB, on the basis of its claim that one part of the joint venture, Fuerte Construction Company, is an SDB; SABER does not claim that the other part of the joint venture, Transco Contracting Company, is an SDB. On July 31, after evaluation of the proposals, the Air Force informed offerors that A.W. & Associates had been selected as the apparently successful offeror. On August 14, SABER filed with our Office a protest alleging that the Air Force had given greater weight to one evaluation criterion than was called for by the RFP.

During the pendency of the protest before our Office, the contracting officer protested the SDB status of SABER to the cognizant office of the SBA. On November 20, 1992, the director of SBA's Division of Program Certification and Eligibility issued a determination that Fuerte Construction Company is not an SDB for the purposes of this procurement. Based on this determination, the Air Force has requested dismissal of the protest on the ground that SABER is not an interested party to contest the award to A.W. & Associates.

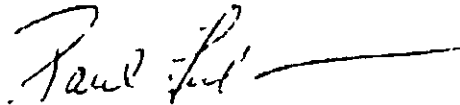
Under the bid protest provisions of the Competition in Contracting Act of 1984, 31 U.S.C. §§ 3551-3556 (1988), only an "interested party" may protest a federal procurement. In order to be an interested party, a protester must have a direct economic interest which would be affected by the award of a contract or the failure to award a contract. 4 C.F.R. § 21.0(a) (1992). A protester is not an interested party where it would be ineligible for award even if its protest were sustained. Rite-Way Servs., Inc., B-245021; B-245035, Oct. 2, 1991, 91-2 CPD ¶ 265.

SABER argues that our Office should not dismiss the protest prior to resolution of an appeal to the SBA's Associate Administrator for Minority Small Business and Capital Ownership Development (AA/MSB&COD). SABER claims that it would be premature to dismiss its protest "prior to a final determination by SBA . . . ."

SABER misconstrues the effect of an SDB status determination by SBA's Division of Program Certification and Eligibility. Such a determination "becomes effective immediately and remains in full force and effect unless and until reversed upon appeal by SBA's AA/MSB&COD . . . ." 13 C.F.R. § 124.609(h)(1) (1992). Here, since the effect of the Division of Program Certification and Eligibility's determination is to render SABER ineligible for award under

this SDB set-aside procurement, SABER is not an interested party for the purpose of filing and pursuing a protest with our Office. Rite-Way Servs., Inc., supra.

The protest is dismissed.

A handwritten signature in cursive script, appearing to read "Paul Lieberman", followed by a horizontal line.

Paul Lieberman  
Assistant General Counsel